

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 608 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJESHKUMAR JAMABHAI PATEL

Versus

INDRAVADAN RATILAL PATEL

Appearance:

MR SANJAY M AMIN for Petitioners
MR AJ PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2000

ORAL JUDGEMENT

The present Civil Revision Application has been filed by the petitioners above-named against the judgment and orders recorded by the two courts below substantially

directing the petitioner to pay court fees on the valuation of the suit and to present the plaint before the Court having jurisdiction to entertain the suit. The petitioners filed Regular Civil Suit No.137/96 before the learned Civil Judge (JD) at Kalol. There the petitioners claimed certain reliefs which have been enumerated at page 17 of the judgment of the Lower Appellate Court which may be read as follows:

1. To declare that the petitioners have no right to undertake any processes with respect to the land allotted to the proposed Cooperative Society by AUDA,
2. The said Cooperative Society be directed to hand over all books of accounts, correspondents, receipt books, voucher books, Resolution books and other literature which may be in the custody of the petitioners, to the respondents,
3. As a consequential relief, the respondents be prevented from dividing the land in the plot and from constructing any house on the said land and from dispossessing of the said houses in any manner whatsoever.

2. In the said matter, the respondents took up a contention that the suit has not been properly valued for the purpose of jurisdiction and court fee and, therefore, the said point was heard and disposed of by the trial court. The trial court found the subject matter was susceptible of monetary evaluation and, therefore, the trial court directed by order dated 7.11.1996 that the petitioners should pay court fee on the amount of valuation of the property and should present the suit before the competent court.

3. Feeling aggrieved by the said order of the trial court, the petitioners preferred Civil Misc.Appeal No.189/96. After hearing the parties, the lower Appellate Court found that the judgment and order of the trial court were correct and the lower Appellate Court dismissed the said Misc.Civil Appeal by judgment and order dated 7.4.1997. Feeling aggrieved by the orders passed by both the courts below, the petitioners have preferred this Civil Revision Application before this Court. It has been mainly contended here that the orders passed by the two courts below are without jurisdiction. That petitioners have claimed certain reliefs which are not susceptible to monetary evaluation, and the two courts below were not justified in directing the

petitioners to pay court fees

4. It appears to be the case of the parties that certain land was allotted to the petitioners and the land was to be allotted to the members of the Society. The land was allotted to the Society by AUDA. The petitioners felt that the land was not being properly allotted and, therefore, the suit was filed and the aforesaid reliefs were claimed.

5. The point is whether the aforesaid subject matter and the reliefs claimed are susceptible to monetary evaluation. The first relief is with respect to declaration that the petitioners have no right to carry out any process with respect to the land allotted by AUDA. Therefore, the land itself is not the subject matter but it appears that the right to manage the said land has been questioned by the plaintiff in the said suit.

The second relief is that the petitioners should hand over literature etc. of the society to the respondents. There also direction is sought that the books of accounts and other literature etc. should be handed over to the plaintiffs of the said suit. That relief can also not be said to be susceptible of monetary evaluation.

The third consequential relief claimed is that the defendants be prevented from dividing the land in to plots and from raising construction on the said land and from selling the said land or from transferring the said land in favour of anybody.

6. It has been contended that these reliefs ultimately involve the subject matter i.e. the land in question and valuation of the land would be valuation of the suit for the purpose of jurisdiction. Here we can find out that so far as the three reliefs are concerned, the claim of the original plaintiff is that the defendants should be prevented from disposing of the said land in any manner whatsoever. Here also, there is no declaration claimed that the plaintiffs are owners of the said land. It is also not claimed that the possession of the said land should be handed over to the plaintiffs. I am not concerned with the dispute as to whether this type of suit is maintainable or not. Therefore, that aspect is not required to be considered. But the point is so far as the reliefs are concerned, the lands themselves are not the subject matter of the suit and, therefore, it cannot be said that the plaintiffs were required to pay

court fees in valuation of the land in question.

7. For this purpose, learned Advocate for the respondent has relief upon a decision in the case of State of Gujarat v. Heirs of Ramsinh, 1990 (2) GLR 1173 wherein it is held that when the suit is filed for an injunction to restrain the defendant from paying money to another or from recovering money from another, the suit is one to prevent monetary loss and would fall under Article 7 Schedule I. I am of the view that on reading the plaint and the relief clause of the said plaint, it is not possible to hold that the suit is such which would fall under the above said category enumerated in this decision. Therefore, on facts, the said decision is not applicable to the present case.

8. The second decision relied upon on behalf of the respondents is Board of Trustees of Port of Kandla v. M/s. Mulraj Ashokkumar Mathreja 1988(1) GLH (NOC) 1. In the said decision, it has been observed in the suit for declaration that there was completed contract between the plaintiff and defendant in respect of purchase of a ship valued at Rs.11 lakhs. Further prayer was for restraining defendant from transferring the ship. Such suit cannot be said to be in respect of matter not susceptible to monetary evaluation. Here this types of reliefs do not appear to have been claimed by the plaintiffs in the plaint and the relief clause have already been enumerated hereinabove. Considering the reliefs claimed by the plaintiffs in the suit, I am of the view that the decision referred to above on facts will not apply to the present case.

9. The third decision relied upon by the respondents is Cotseeds Corpn. v. Cotton Corpn. of India, 1988(2) GLR 1021. There it has been observed that for the purpose of court fees, it is the duty of Courts to understand the real nature of the suit and must not be carried away by clever drafting where essentially the suit is for specific performance of the contract, a drafting device that the suit is for a prohibitory injunction should not be allowed to succeed. In the present case, we find that looking to the plaint and the reliefs claimed, it cannot be said that the plaintiff has moulded relief in one way but it carries a different meaning. It is true that the Court has to go into the intention of the parties while deciding the real nature of the suit but even if it is done so, in the present case it does not appear to be such an intention on the part of the plaintiffs. In that view of the matter, even this decision does not apply to the facts of the case

before us.

10. Learned Advocate for the respondent has also contended that there is no jurisdictional error and therefore, this court should not interfere when there is concurrent findings of fact by the courts below in the matter.

11. It is true that this Court is normally slow in exercising its revisional power particularly when two courts below have recorded concurrent finding of fact. However, the facts go to show that if the order is allowed to be implemented, the petitioners may be required to pay huge amount of court fees also and ultimately such order may prejudicially and adversely affect interest of the original plaintiffs in the suit. That would again result in failure of justice. Under the circumstances, I am of the view that this is a fit case wherein the revisional powers of this Court should be exercised. In the aforesaid view of the matter, I find material irregularity relating to jurisdiction committed by the trial court. It is to be seen that the original court has already decided that the suit does not fall within its jurisdiction but it will fall under section 3 D and such valuation of the suit would exceed Rs.50,000/and therefore, the decision ultimately touches jurisdiction of the original court also. It therefore, cannot be said that there is no jurisdictional error in the orders passed by the courts below.

11. In view of the aforesaid, this CRA is allowed. Orders passed by the courts below are set aside and the trial court i.e. the court of Civil Judge (JD), Kalol is directed to proceed further with the hearing of the suit from the stage it was left. Rule is made absolute as indicated above. No order as to costs.

12. Considering the nature of the suit, the trial court shall expedite hearing and disposal of the suit and the party shall cooperate with the trial court in early disposal of the suit so that the suit can be disposed of as expeditiously as possible, preferably within three months.

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msp.